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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re ALEXANDREA A., a Person Coming Under the Juvenile Court Law.	
CHEREE A., **Petitioner,** **v.** **SAN MATEO COUNTY SUPERIOR COURT, ACTING AS A JUVENILE COURT,** **Respondent.** _____ **SAN MATEO COUNTY DEPARTMENT OF SOCIAL SERVICES,** **Real Party in Interest.**	**A096937** **(San Mateo County Super. Ct. No. 68505)**

INTRODUCTION

Petitioner Cheree A. is the mother of Alexandrea A., a dependent child of the juvenile court. Pursuant to California Rules of Court, rule 39.1B, petitioner filed a petition for extraordinary relief seeking review of the trial court's order setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.[1]

[1] The Welfare and Institutions Code provides that a petition for extraordinary relief is generally the exclusive means by which an aggrieved party may challenge an order setting a permanency planning hearing. (Welf. & Inst. Code, § 366.26, subd. (b)(1).) These petitions for extraordinary relief are governed by procedures set forth in California Rules of Court, rule 39.1B. All statutory references are to the Welfare and Institutions Code. All rule references are to the California Rules of Court.

The hearing is currently scheduled for March 5, 2002. Petitioner claims that 1) she was not provided reasonable reunification services; and 2) there was a substantial probability Alexandrea would be returned to her custody if six additional months of reunification services were offered. A review of the record discloses substantial evidence to support the court's findings and orders. Accordingly, we deny the petition.

FACTS AND PROCEDURAL BACKGROUND

We see no need to recount the history of the juvenile proceedings to date, except when necessary to address petitioner's claims for extraordinary relief. Briefly, a petition was filed in February 2001, on behalf of one-week-old Alexandrea due to the infant's prenatal exposure to amphetamines and petitioner's admission that she did not obtain any prenatal care during her pregnancy. Petitioner did not contest the allegations in the petition, and on March 15, 2001, Alexandrea was declared a dependent child of the juvenile court.

Alexandrea was originally detained with her maternal grandmother, with whom petitioner also resided. However, both petitioner and the maternal grandmother failed to communicate with the social worker assigned to the case or to keep scheduled appointments. After the maternal grandmother was evicted from her home, the whereabouts of petitioner, the maternal grandmother, and Alexandrea were unknown for a period of time. At the urging of Alexandrea's father, the child was eventually turned over to the Department.

After a court hearing, Alexandrea was placed with a paternal uncle. However, when the paternal uncle's fingerprint revealed that he had been convicted for violating Penal Code section 261.5 (unlawful sexual intercourse with a minor), the then-five-month old child was removed from his home and placed in foster care. She was eventually placed with a prospective adoptive family, where she has received excellent care and made substantial developmental progress. The family wishes to adopt Alexandrea as soon as that becomes legally possible.[2]

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[2] Alexandrea's father has relinquished his parental rights to the Department, in the hope that Alexandrea's adoption can be expedited.

During the reunification period, petitioner was expected to refrain from using drugs and alcohol, participate in a substance abuse assessment and any recommended treatment, make herself available for substance abuse testing, participate in parenting classes, secure suitable housing, and maintain regular contact with Alexandrea. The report prepared by the San Mateo County Department of Social Services (the Department) for the six-month review hearing indicated "that the mother has not demonstrated any willingness or desire to work towards reunification with the child." She was dropped from a substance abuse treatment program after she continually tested positive for substance abuse, she failed to attend any parenting classes, and she frequently missed scheduled visits with Alexandrea.

It was further reported that petitioner had been arrested for drug usage, possession of drug paraphernalia, forgery, burglary and receiving stolen property. After she failed to appear for her criminal court hearing, she was incarcerated in the San Mateo County Women's Jail. The report indicates "[t]he likelihood of the mother serving a jail time for at least a year or more is high and [she] will not be available to work towards the reunification with the child. Based on the mother's demonstrated behavior and past history, the likelihood of reunification within the statutory time period is very poor."

On November 6, 2001, the court held the six-month review hearing. At the time of the hearing, petitioner was still incarcerated. The court heard the testimony of the social worker assigned to the case indicating there was no substantial probability that petitioner could reunify with Alexandrea within the statutory time frame because petitioner faced the likelihood of prolonged incarceration and because petitioner had failed to use the previously offered reunification services. Petitioner also testified. She admitted that for the past six months she had not done much with her program and concurred with the social worker's assessment that she had not cooperated with the Department. However, she testified that since her incarceration, she had come to realize that she had a problem with drugs and alcohol and that she could not "get my daughter back with drugs and alcohol involved in my life." She indicated she would be willing at this point to participate in a recovery program where Alexandrea could reside with her.

At the conclusion of the hearing, the sole issue raised by counsel for petitioner was the adequacy of the reunification services. To clarify petitioner's argument, counsel stated: "[T]he department has provided substantial services within the last six months. It's unfortunate the one service my client really needed within the last month is the one she didn't get, which is the referral for this program where she could be in recovery with her child." In rebuttal, the Department's lawyer pointed out that petitioner "has, prior to her incarceration, not participated with any of the programs, had not even visited the child regularly or kept the department informed of her whereabouts, did not inform the department she had been arrested so visitation could continue." She argued that petitioner's request to be referred to a residential treatment program where Alexandrea could be placed in her custody is "far too little [and] too late" to support a finding that reasonable reunification services had not been offered.

Based upon this evidence, the juvenile court found that reasonable services had been provided or offered designed to help petitioner overcome the problems that led to Alexandrea's removal. (§ 366.21, subd. (f).) The court found petitioner had not complied with her case plan and that there was no substantial probability Alexandrea could be returned to petitioner within six months even if reunification services were extended. Thus, the court entered an order terminating reunification services and ordering that a hearing be set pursuant to section 366.26 for implementation of a permanent plan for Alexandrea.

This petition followed. Opposition was received on December 20, 2001. Pursuant to rule 39.1B, subdivision (m), we now determine the petition on its merits.

DISCUSSION

Petitioner argues the court erred in ruling that reasonable reunification services had been provided and in terminating further reunification services. Petitioner also argues that by the time of the six-month status review hearing, she had finally acknowledged she had a serious drug problem and that she should have been given additional time to have Alexandrea placed with her in a residential drug treatment program so that she could complete her reunification service plan. In short, she argues

that the juvenile court should have extended reunification services for another six months rather than setting the matter for a section 366.26 hearing. We reject these arguments.

At the six-month status review hearing the juvenile court may extend reunification services only if it finds a substantial probability that the child will be returned to parental custody within the 18-month period following initial detention or if it finds that no reasonable reunification services were provided. (§§ 361.5, subd. (a); 366.21, subd. (g)(1).) If the court finds that reasonable reunification services were provided but no substantial probability of a return to parental custody within the 18-month time frame, then the court must terminate reunification services and order a hearing pursuant to section 366.26. (§ 366.21, subd. (g)(3).)

In reviewing the reasonableness of the reunification services provided, we employ the traditional substantial evidence test. Under this standard, we view the evidence in a light most favorable to the respondent, and indulge in every legitimate reasonable inference to uphold the judgment. Substantial evidence is evidence that is " 'reasonable, credible, and of solid value,' " such that a reasonable trier of fact could rely on to make the findings which the court did make. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) If there is any substantial evidence to support the findings of the juvenile court, we are without power to reweigh or reevaluate them. Instead, we must affirm the juvenile court's determination as based on those findings. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362; *In re Precious J*. (1996) 42 Cal.App.4th 1463, 1472-1473; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

The department is required to "identify the problems leading to the loss of custody, offer services designed to remedy these problems, and maintain reasonable contact with the parents to assist in areas where compliance proves difficult, such as transportation. [Citation.]" (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438; see also *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458 ["it is . . . well settled, and clearly a matter of common sense, that a reunification plan 'must be appropriate for each family and be based on the unique facts relating to that family.' [Citation.]"].) The reunification plan must be formulated and implemented in good faith, i.e., with the purpose of

preserving and strengthening the parent-child bond. (See *Hansen v. Department of Social Services* (1987) 193 Cal.App.3d 283, 293; *In re John B.* (1984) 159 Cal.App.3d 268, 274.) However, the requirement that the Department provide reunification services to the parent of a dependent child "is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S., supra*, 188 Cal.App.3d at p. 1463, fn. 5.) "Reunification services are voluntary and cannot be forced on an unwilling or indifferent parent. [Citation.]" (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.)

The record clearly reflects that petitioner's primary problem, which the case plan was designed to resolve, was her drug and alcohol abuse and her apparent unwillingness and inability to properly parent Alexandrea. The conditions of the reunification plan in this case were reasonable and fair, and were properly designed to prevent a recurrence of the circumstances that led to the minor being removed from petitioner's custody in the first place. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776-1777.) The terms of the reunification services plan required petitioner to attend parenting classes, participate in drug rehabilitation, and provide suitable housing for the minor. Over the course of eight months, from the time the reunification plan was implemented, the Department offered assistance to petitioner, giving her repeated opportunities to try to reunite with Alexandrea. Despite the Department's best efforts, petitioner never fulfilled any of the requirements of the reunification plan. Based on this record, we conclude there is substantial evidence to support the juvenile court's finding that the Department made reasonable efforts to provide petitioner with adequate reunification services, and that the reunification services provided were in fact reasonable. (*Angela S. v. Superior Court, supra*, 36 Cal.App.4th at pp. 762-763.)

In arguing that the court should have extended reunification services instead of terminating them, petitioner essentially ignores the portion of the record discussing petitioner's lack of progress in remedying the causes of Alexandrea's initial dependency, the uncertainty surrounding the disposition of her pending criminal charges, her lack of relationship with Alexandrea, and the extreme unlikelihood that she would make a complete recovery and be able to effectively parent Alexandrea in the short time frame

left for reunification. Instead of beginning reunification efforts upon Alexandrea's removal shortly after she was born, petitioner did nothing until she was incarcerated and faced with termination of her parental rights. Even then, all that she has done is acknowledge drugs and alcohol have interfered with her ability to parent and express a desire to be reunited with her child in a residential treatment program. As was held in *In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038: "Expressions of love and concern do not equate to the day to day care and devotion the average parent expends on behalf of children. The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it."

There is no evidence before the court indicating that she would be able to establish a stable living environment for Alexandrea. Nor has petitioner demonstrated the capacity and ability both to complete the objectives of her treatment plan and to provide for Alexandrea's safety, protection, and physical and emotional wellbeing. The evidence relative to petitioner's prior drug usage and history, together with the stage at which she was in recovery, is sufficient to support the court's finding that there was no substantial probability of reunification within an extended reunification period.

DISPOSITION

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section

366.26. (See § 366.26, subds. (b)(1) & (b)(2).) Since the permanency planning hearing is set for March 5, 2002, this opinion is final as to this court forthwith. (Rule 24(d).)

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Ruvolo, J.

We concur:

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Kline, P.J.

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Haerle, J.